

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

RONALD N. NILSON, ROBERTA CHURCH
AND EUGENE BUTLER,

Petitioners,

v.

LEWIS COUNTY,

Respondent,

and,

FORECASTLE TIMBER COMPANY, LLC,

Intervenor.

Case No. 11-2-0003

COMPLIANCE ORDER

THIS Matter came before the Board for hearing on July 31, 2012 following submittal of Lewis County's Report on Compliance¹ filed in response to the Board's August 31, 2011 Final Decision and Order (FDO). The Petitioners, Eugene Butler, Ronald N. Nilson, Roberta Church and Friends of Mineral Lake (collectively referenced as Nilson) filed objections² to which Lewis County responded.³

The compliance hearing was held telephonically and was attended by Board members Nina Carter and William Roehl with Mr. Roehl presiding. Nilson was represented by Wyatt Golding and Eugene Butler also spoke on Nilson's behalf. Forecastle Timber Company, LLC (Intervenor) was represented by Charles Maduell and Lewis County (County) by Glenn J. Carter.

¹ Filed June 13, 2012

² Petitioners Butler's Objections to Compliance (Butler Response) and Petitioners Roberta Church, Ronald Nilson, and Friends of Mineral Lake's Response to Lewis County's Report on Compliance (Nilson Response), both filed July 2, 2012

³ Lewis County's Response to Objections On Compliance, filed July 16, 2012

I. BURDEN OF PROOF

Following a finding of noncompliance, the jurisdiction is given a period of time to adopt legislation to achieve compliance.⁴ After the period for compliance has expired, the Board is required to hold a hearing to determine whether the local jurisdiction has achieved compliance.⁵ For purposes of Board review of the comprehensive plans and development regulations adopted by local governments in response to a noncompliance finding, the presumption of validity applies and the burden is on the challenger to establish the new adoption is clearly erroneous.⁶

In order to find Lewis County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made."⁷ Within the framework of state goals and requirements, the Board must grant deference to local governments in how they plan for growth:

The legislature intends that the board applies a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. . . Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.⁸

In sum, the burden is on the Petitioners to overcome the presumption of validity by demonstrating the action taken by the County is clearly erroneous in light of the goals and requirements of chapter 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2). Where not clearly erroneous and thus within the framework of state goals and requirements, the planning choices of the local government must be granted deference.

⁴ RCW 36.70A.300(3)(b).

⁵ RCW 36.70A.330(1) and (2).

⁶ RCW 36.70A.320(1), (2) and (3).

⁷ *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201, (1993).

⁸ RCW 36.70A.3201, in part.

II. PRELIMINARY MATTERS

Following issuance of the FDO, the County appealed the Board's decision to the Thurston County Superior Court. On compliance, Nilson attached its Superior Court appellate brief to its compliance objections. The County moved to strike that brief from the record⁹ or, in the alternative, to allow submission of all briefs filed in the appeal.¹⁰ The Presiding Officer granted the motion to strike and the brief was not considered.

III. DISCUSSION

Issue to be Decided

Whether Lewis County's action in response to the Board's FDO appropriately addresses the violations of RCW 36.70A.070 (preamble) and RCW 36.70A.130(1)(d)?

In the FDO the Board found Lewis County's Resolution 10-359 and Ordinance 1219 to be non-compliant with the Growth Management Act (GMA) as their adoption resulted "in an inconsistent Comprehensive Plan Land Use Map and an inconsistent zoning map, in violation of RCW 36.70A.070 (preamble) and RCW 36.70A.130(1)(d). There are similarly situated properties designated and zoned differently on both the Comprehensive Plan Land Use Map and the zoning map."¹¹

The violations arose from language in both the Comprehensive Plan and the Lewis County Code development regulations (LCC) regarding one of the criterion for classification and subsequent designation of Forest Resource Land (FRL), specifically:

Lewis County Comprehensive Plan Land Use Element (which states, in part):

Forestlands are classified as follows:

⁹ Lewis County's Response to Objections On Compliance at 16.

¹⁰ The alternative was raised during the compliance hearing. See transcript, p. 4

¹¹ FDO, August 31, 2011 at 20. See also Order Denying Motions for Reconsideration, October 3, 2011 at p. 7: "The result is that the Comprehensive Plan Land Use Map and the zoning map show properties which, when taking into consideration the location of roads, watercourses and railroad rights-of-way, are designated FLLTCS, but do not qualify for that designation as they are no longer part of a contiguous 5,000 acre block due to separation. Furthermore, zoning a property as FLLI when it does not meet the criteria for such a designation fails to implement the clear language of the Comprehensive Plan classification criteria." And at p. 9: "The Board's inconsistency concern related to application of the new interpretation of the "5,000 contiguous acres" clause to designate the Property as FLLI combined with the fact other properties no longer meeting the FLLTCS criteria, under that new interpretation, remain so designated."

1 A. **Forestlands of Long Term Commercial Significance:** A
2 predominance of forest land graded 2 and forest land grade 3 **with a**
3 **minimum block size of 5,000 contiguous acres** shall be required for
4 designation as forest land of long- term commercial significance. In
5 addition, all federally owned lands managed for their forest resources are
6 included.

7 B. **Forestlands of Local Importance:** Are forestlands with the general
8 attributes of Forestlands of Long Term Commercial Significance, **except**
9 **that they are smaller than the required minimum 5,000 contiguous**
10 **acres.** Forestlands of Local Importance are only designated by an "Opt In"
11 process and must generally be a minimum of 20 acres to be considered.
12 Landowners petitioning to opt in must commit that the property will remain
13 in that designation for a minimum of 10 years. (emphasis added)¹²

14 LCC 17.30.420 Classification.

15 Long-term commercially significant forest resource lands of Lewis County are
16 classified according to the following:

17 (2) Minimum Block Size. **A minimum block size of 5,000 contiguous**
18 **acres** managed as forest lands. These blocks consist of predominantly
19 large parcels and which can be in multiple ownerships.

20 LCC 17.30.430 Designation.

21 Lands of Lewis County meeting the classification criteria for forest resource
22 lands are hereby designated as forest resource lands in the following
23 categories:

24 (1) Forest Land of Long-Term Commercial Significance. Primary forest
25 lands are those forest lands meeting the classification criteria **within the**
26 **minimum blocks of 5,000 contiguous acres** and all federally owned
27 lands managed for their forest resources.

28 (2) Forest Land of Local Importance. Forest lands of local importance are
29 those forest lands meeting the criteria of LCC 17.30.420(1), (3), (4), (6)
30 and (7) which **fall outside a 5,000-contiguous-acre block** and meet the
31 following criteria:

32 The County asserted in briefing, at the Hearing on the Merits and at the compliance hearing
 (and the Board so found in its FDO), that under the Lewis County Comprehensive Plan and

¹² Lewis County Comprehensive Plan at pp. 4-56

1 its development regulations, there are two types of RCW 36.70A.170 designated forest
2 resource lands, FLLTCS and FLLI.¹³ The key differentiations for purposes of the FDO and
3 this compliance proceeding involve acreage block size, how that block size is ascertained
4 and the manner of designation. Block size determination turns on the definition of
5 "contiguous" as the word was used in Lewis County Ordinance 1151¹⁴ and is now used in
6 the Comprehensive Plan, LCC 17.30.420 and LCC 17.30.430. The Board found in the
7 FDO, based on the Record before it, Lewis County had reinterpreted the word resulting in
8 properties being shown on the County's combined Land Use/Zoning Map as FLLTCS when
9 those properties failed to meet the criteria for such a designation.¹⁵

11
12 On compliance, the County adopted Resolution 12-184 and Ordinance 1238. Those actions
13 separated the Comprehensive Plan Land Use Map from the zoning map. The Land Use
14 Map, according to the County, now depicts all RCW 36.70A.170 designated FRL as such,
15 whether those lands are FLLTCS or FLLI, while the zoning map depicts both categories of
16 FRL separately: FLLTCS and FLLI, each having its own density allowance.¹⁶ The County
17 asserts that action eliminated the internal Comprehensive Plan inconsistencies. The new
18 zoning map also depicts parcels which opted into the FLLI category in 1996-1997¹⁷, as well
19 as Intervenor's 830 acres, as FLLI, arguably curing development regulation
20 inconsistencies.
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22 23 *Positions of the Parties*

24 The Petitioners assert the County's action failed to achieve compliance with RCW
25 36.70A.070 (preamble) and RCW 36.70A.130(1)(d). While they acknowledge the County's
26 correction of the prior failure to map properties which "opted in" to the FLLI category in
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30 ¹³ The County's briefs refer to Forest Lands of Long-Term Commercial Significance as FRLTCS and Forest
31 Lands of Local Importance as FRLLI. This order uses FLLTCS and FLLI.

32 ¹⁴ Lewis County's Report on Compliance, Ex. A.

¹⁵ Order Denying Motions for Reconsideration, October 3, 2011 at 7.

¹⁶ FLLTCS allows one residence for every 80 acres while FLLI allows one for 20 acres.

¹⁷ At the Hearing on the Merits, the County stated that no property owner had applied to be designated as FLLI prior to Intervenor's application to be so designated. During compliance, the County was made aware of eight applications for designation as FLLI which were approved in 1996 and 1997.

1 1996-1997¹⁸, Petitioners argue the underlying inconsistencies remain. They state the
2 Comprehensive Plan text designation criteria language was not changed, yet with the
3 redesignation of 830 acres of Intervenor's property to FLLI, the balance of its property, an
4 adjacent 1250 acres, remains FLLTCS. They argue the existence of the two designations
5 clearly illustrate the inconsistency.¹⁹ They observe both areas share the same external
6 physical boundaries, neither are "part of a minimum contiguous block of 5000 contiguous
7 acres" according to the County's interpretation of that clause, yet one is FLLTCS while the
8 other is FLLI. They state the County has applied two interpretations of classification and
9 designation criteria resulting in inconsistency.
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12 Finally, Petitioners observe the County has acknowledged inconsistencies remain with its
13 statement that the addition of the 1996-1997 opt in properties to the zoning map addressed
14 "... some of the apparent mapping inconsistencies...."²⁰
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16 The County argues the Petitioners did not allege in their PFR that the County's actions in
17 adoption of Resolution 10-359 and Ordinance 1219 failed to implement the County's
18 Comprehensive Plan in violation of RCW 36.70A.130(1)(d); rather, it states the only
19 argument raised involved inconsistency. They also state the Board nevertheless rejected
20 any such contention.²¹ Additionally, the County explains its understanding of the differences
21 between "classification" and "designation" of RCW 36.70A.170 natural resource lands. The
22 County further asserts the Board ruled either interpretation of the word "contiguous" was
23 consistent with and implemented the Comprehensive Plan, and that the Board ruled
24 development regulation inconsistencies were not GMA violations. Finally, the County
25 addresses the specific objections of both Butler and Nilson, raising many of those same
26 arguments.
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30 ¹⁸ Resolution No. 96-491 adopted August 26, 1996; Resolution No. 97-160 adopted March 31, 1997;
31 Resolution No. 97-363 adopted July 7, 1997; Resolution No. 97-425 adopted August 4, 1997; Resolution No.
32 97-468 adopted September 2, 1997; Resolution No. 97-561 adopted November 3, 1997; Resolution No. 97-
575 adopted November 10, 1997; Resolution No. 97-576 adopted November 10, 1997.

¹⁹ Petitioners Roberta Church, Ronald Nilson, and Friends of Mineral Lake's Response to Lewis County's
Report on Compliance at 5.

²⁰ Id. at 8.

²¹ Lewis County's Response to Objections on Compliance at 3.

1 *Board Analysis and Findings*

2
3 **A. Clarification of Prior Analysis**

4 In its Report on Compliance and its Response to Objections on Compliance, the County
5 misconstrued portions of the Board's FDO and Order on Reconsideration. The Board
6 wishes to further clarify its statements in response to the County's interpretation so as to
7 resolve any misunderstandings.
8

9 *Failure to Implement*

10 First of all, the Board rejects the County's assertion that Petitioners did not contend the
11 originally challenged Resolution 10-359 and Ordinance 1219 failed to implement the
12 Comprehensive Plan.²² While the Petitioners' issue statements were less than artfully
13 crafted, the Board interpreted their references to RCW 36.70A.130 violations as allegations
14 that the County's action was inconsistent with **and** failed to implement the Comprehensive
15 Plan. First of all, the Petitioners' Issue 1 included an allegation of violations of RCW
16 36.70A.130(1)(d). While the statement failed to use the word "implement", the Board will not
17 and has not held petitioners to a standard requiring recitation of the exact wording of a GMA
18 statute. An allegation of a violation of RCW 36.70A.130(1)(d), a statute consisting of two
19 short sentences, is sufficient.²³ Secondly, the Board stated: "The question presented with
20 Issue 1(c) is whether the BOCC's interpretation either failed to implement the
21 Comprehensive Plan or resulted in an inconsistency between the Comprehensive Plan and
22 the development regulations..."²⁴ The Board also stated: "[h]ave the Petitioners met their
23 burden to establish the Comprehensive Plan Land Use Map or the development regulations'
24 zoning map, as amended by the Resolution and Ordinance, are either inconsistent with or
25 fail to implement the Comprehensive Plan?"²⁵, as well as: "...the Board...does have
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31 ²² Id.

32 ²³ RCW 36.70A.130(1)(d): "Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan." The Board could very well reach a different conclusion regarding an allegation of violations of a longer or more complex statute or WAC.

²⁴ Final Decision and Order at 12.

²⁵ Id.

jurisdiction to address potential inconsistencies resulting from that interpretation as well as whether the zoning change failed to implement the Comprehensive Plan."²⁶

Development Regulation Inconsistencies

The County argues the Board ruled that internal development regulation inconsistencies do not constitute violations of the GMA and are beyond its jurisdiction.²⁷ In fact, the Board stated: "The Board, however, concludes the Petitioners cannot establish a violation of RCW 36.70A.040(5). Either interpretation of the challenged clause can be seen to be consistent with and to implement the Comprehensive Plan classification criteria. **The difficulty arises as a result of application** of the new interpretation, a difficulty leading to inconsistent Plan and zoning maps."²⁸ (emphasis added)

The Board's statement was: "... an inconsistent interpretation of the Comprehensive Plan and LCC phrase "5000 contiguous acres", in and of itself, is not an issue within the Board's jurisdiction."²⁹ (Emphasis added)

It is true that either interpretation of "contiguous" could be found to be consistent with and implement the Comprehensive Plan. That would require application of the same interpretation throughout the Comprehensive Plan text, the future land use map and the development regulation (zoning) map. Achieving consistency and implementation, in this case, involves consideration of the **results of application** of interpreting the word "contiguous". An "inconsistent" interpretation and subsequent application of criteria may result in a failure to implement a comprehensive plan. RCW 36.70A.040(5) requires that development regulations both implement and be consistent. In most instances inconsistent development regulations will fail to implement and/or fail to be consistent with a comprehensive plan.

²⁶ Id. at 19.

²⁷ Lewis County's Response to Objections on Compliance, at 6.

²⁸ Final Decision and Order, August 31, 2011 at 20.

²⁹ Id. at 15.

1 *Reclassification*

2 The County also observes the Board stated there was no requirement on compliance to
3 identify and reclassify lands that were no longer eligible for classification as FLLTCS.³⁰ That
4 is an accurate statement. However, the Board did not intend to imply the County's
5 compliance action could therefore include continuing inconsistencies, a conclusion which
6 appears to be implicit in the County's statement. Nor did the Board recognize, as stated by
7 the County, that "there can be lands classified as FRLTCS that may meet the criteria to be
8 classified as FRLLI, if the landowner requests to opt-in."³¹ While that situation could
9 possibly arise as a result of road or railway construction or stream course changes, actions
10 which could serve to sever properties from contiguous blocks greater than 5000 acres,
11 those situations were not before the Board.
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14 **B. Classification and Designation**

15 The County, in its Response to the Petitioners' objections, first states:

16 When the County initially designated Forest Resource Land ("FRL") as
17 mandated by RCW 36.70A.170, the County classified all FRL for zoning
18 purposes as Forest Resource Land of Long Term Commercial Significance
19 (FRLTCS). (See Ordinance 1151.) The other zoning classification, Forest
20 Resource Land of Local Importance (FRLLI), could only be applied upon the
21 affirmative request of the landowner and was not an option in the initial,
22 statutorily-mandated and County-initiated designations.³²

23 The County's continuing reference to "classification" for zoning purposes contributes to the
24 Board's difficulty in understanding the County's argument. The County clearly conflates
25 "classification" with "zoning".
26

27 Classification of the three types of natural resource lands (and critical areas) was the first
28 step involved in ensuring the conservation of natural resource lands and the viability of the
29 resource-based industries that depend on those resource lands. Classification in the
30 context of RCW 36.70A.050 and WAC 365-190-040(4) does not involve development
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30 Lewis County's Response to Objections on Compliance, at 3, referring to the Board's Order on
Reconsideration, at 9.

31 Lewis County's Response to Objections on Compliance, at 15.

32 Id. at 1.

1 regulations, i.e. zoning. Classification “. . . requires defining categories to which natural
2 resource lands and critical areas will be assigned”, possibly using federal or state agency
3 classification schemes to ensure regional consistency.³³ The WAC guidelines point out that
4 not all areas which are classified must be designated.³⁴

5
6 Designation was the second step. “Pursuant to RCW 36.70A.170, natural resource lands
7 and critical areas must be designated based on their defined classifications.”³⁵ “Inventories
8 and maps should indicate designations of natural resource lands”³⁶ The Board notes
9 the guidelines further clarify the difference between classification and designation.

10 Specifically, WAC 365-190-040(5)(c) states “Designation means, at a minimum, formal
11 adoption of a policy statement, and may include further legislative action. Designating
12 inventoried lands for comprehensive planning and policy definition may be less precise than
13 subsequent regulation of specific parcels for conservation and protection.”³⁷

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16 After the classification and designation procedures, the third step required jurisdictions to
17 adopt development regulations to assure conservation of the designated lands. See RCW
18 36.70A.170³⁸, RCW 36.70A.050³⁹ and WAC 365-190-020(6).⁴⁰ Initial adoption of

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21 ³³ WAC 365-190-040(4).

22 ³⁴ Id.

23 ³⁵ WAC 365-190-040(5)(a).

24 ³⁶ WAC 365-190-040(5)(b).

25 ³⁷ WAC 365-190-040(5)(c).

26 ³⁸ RCW 36.70A.170 (in relevant part):

27 Natural resource lands and critical areas — Designations.

28 (1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

29 (b) Forest lands that are not already characterized by urban growth and that have long-term
30 significance for the commercial production of timber;

31 (2) In making the designations required by this section, counties and cities shall consider the
32 guidelines established pursuant to RCW 36.70A.050.

33 ³⁹ RCW 36.70A.050 (in relevant part, emphasis added):

34 **Guidelines to classify** agriculture, forest, and mineral lands and critical areas

35 (1) Subject to the definitions provided in RCW 36.70A.030, the department shall adopt guidelines,
36 under chapter 34.05 RCW, no later than September 1, 1990, **to guide the classification of:** . . . (b)
37 forest lands The department shall consult with the . . . department of natural resources regarding
38 forest lands

39 (4) The guidelines established by the department under this section regarding **classification** of forest
40 lands shall not be inconsistent with guidelines adopted by the department of natural resources.

41 ⁴⁰ WAC 365-190-020(6) (in relevant part, emphasis added):

42 . . . For each type of natural resource land and critical are, counties and cities planning under the act
should define classification schemes and prepare development regulations that govern changes

1 development regulations was required by RCW 36.70A.060 and the purpose of those
2 regulations was to “preclude uses and development incompatible with natural resource
3 lands and critical areas.”⁴¹

4
5 RCW 36.70A.050 and WAC 365-190-020(6) make clear the distinction between
6 classification and development regulations. By way of example, the RCW 36.70A.050(4)
7 requirement of consistency with guidelines adopted by the Department of Natural
8 Resources for classifying forest land is unrelated to adoption of development regulations.
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10 It appears to the Board the County first adopted “Forest Resource Lands” classification
11 criteria.⁴² The County then designated its Forest Resource Lands in accordance with those
12 criteria.⁴³ The two adopted designation categories were Forest Lands of Long Term
13 Commercial Significance and Forest Lands of Local Importance.⁴⁴ Those actions, which
14 occurred in 1996, were in compliance with RCW 36.70A.170 and RCW 36.70A.050. It also
15 appears the County adopted different regulations for its designated forest resource lands.
16 FLLTCS has a minimum lot area of 80 acres while FLLI’s minimum lot area is 20 acres.⁴⁵
17 There are also different applicable setbacks.⁴⁶
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20 Further contributing to the Board’s difficulty in understanding the County’s argument are the
21 following statements in the County’s Compliance Report:
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24 in land uses and new activities by prohibiting clearly inappropriate actions and restricting, allowing, or
25 conditioning other activities as appropriate.

26 ⁴¹ WAC 365-190-020(6) and RCW 36.70A.060.

27 ⁴² Lewis County Ordinance 1151, Section 4.1 Classification (1996): “Long-term commercially significant Forest
28 Resource Lands of Lewis County are classified according to the following.” See Lewis County Ordinance
29 1151, Section 3.1, p. 6 where it states “This ordinance classifies and designates resource lands in Lewis
30 County and establishes regulations . . .” See also Lewis County Comprehensive Plan, p. 1-1: “**Classification,**
31 **Designation and Protection of Resource Lands and Critical Areas-** The next step was the identification of
32 resource lands and critical areas and the adoption of interim regulations to assure resource lands and critical
areas were identified and protected during the planning process. The County adopted both sets of regulations
in 1996 . . .” The classification criteria, initially included in Lewis County’s 1996 Ordinance 1151, are now
included in the County Comprehensive Plan

⁴³ Lewis County Ordinance 1151, Section 4.2 Designation (1996): “Lands of Lewis County meeting the
classification criteria for forest resource lands are hereby designated as forest resource lands in the following
categories.”

⁴⁴ Ordinance 1151, p. 15, Sections 4.2 A and 4.2 B.

⁴⁵ LCC 17.30.490(1) and (2).

⁴⁶ LCC 17.30.500.

1 "Further, LCC 17.30.430(2)(a) explicitly **prohibits the County from**
2 **classifying land** as FRLLI unless and until a landowner submits an
3 application to "opt-in" to that classification . . . "⁴⁷

4 "Thus, while the current County Code creates two classifications of FRL
5 (FRLLTCS and FRLLI) the County **must classify FRL as FRLLTCS** unless
6 and until the landowner voluntarily and affirmatively petitions to "opt in" to the
7 FRLLI classification."⁴⁸ (emphasis added)

8 The County is not prohibited from "classifying" land. Classification of natural resource lands
9 does not focus on specific properties or areas. It involves a systematic division of natural
10 resource lands into classes or groups. Rather than being prohibited from "classifying", it
11 appears the County is prohibited from "designating" forest resource land as FLLI until the
12 owner applies for that designation. Nor was the County required to "classify" FRL as
13 FLLTCS. The County was required to classify its forest lands and to then designate those
14 forest lands. Under the Lewis County Comprehensive Plan and the LCC, forest lands may
15 not be designated as FLLI unless and until the landowner applies and is granted that
16 designation. Similarly, forest lands may not be designated FLLTCS in Lewis County, using
17 the current designation criteria interpretation, if they are not part of a contiguous block of
18 5000 acres.
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21 **C. Opt In Argument**

22 The Comprehensive Plan classification criteria are restated in the Lewis County Code. LCC
23 17.30.420(7) includes the following language (emphasis added): "**The above criteria**
24 [referring to LCC 17.30.420(1) through (6)] **are applied** throughout unincorporated Lewis
25 County **to designate** those forest lands of long-term commercial significance." LCC
26 17.30.430(2)(a) states: "Forest lands of local importance **shall only be designated** by the
27 board of county commissioners upon a petition for such designation by the landowner..." It
28 is thus clear, and the Board so finds, in 1996 Lewis County adopted forest resource land
29 classification criteria and then designated those natural resource lands in accordance with
30 the criteria.
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⁴⁷ Lewis County's Report on Compliance at 2.

⁴⁸ Id. at 3.

1 The map accompanying 1996's Ordinance 1151 which illustrated the initial FRL
2 designations is apparently no longer in existence.⁴⁹ The County adopted its first
3 comprehensive plan in 1999. More recent Comprehensive Plan and zoning maps⁵⁰ show
4 extensive properties which have been designated as FRL.⁵¹ The only logical conclusion is
5 that all 1996 designated and mapped forest resource lands fit within the first designation
6 category, FLLTCS.⁵² That is, since no property owner had elected to "opt in", no FLLI forest
7 resource lands would have been designated. Originally Intervenor's entire 2080 acres was
8 shown on the combined Comprehensive Plan/zoning map as FRL and, since neither
9 Intervenor nor its predecessors in interest had requested and been allowed to opt in to the
10 FLLI designation, that property had to have been designated as FLLTCS. The Board finds
11 that all of the originally designated forest resource lands were forest lands of long term
12 commercial significance; that is, they met the Lewis County FLLTCS designation criteria and
13 were so designated by the BOCC. (Until recently the County believed that no one had ever
14 chosen to "opt in" to the FLLI category. During compliance, the County discovered eight
15 property owners had elected to "opt in" in 1996-1997, subsequent to adoption of Ordinance
16 1151.⁵³ That error was corrected on compliance, and the new zoning map shows those
17 eight properties as FLLI. Significantly, the County acknowledged at the Compliance
18 Hearing that none of those eight properties had been designated as FRL at the time the
19 owners applied to "opt-in" to the FLLI designation and zoning.)⁵⁴ Rather, the eight
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24 ⁴⁹ Ordinance 1151, Section 4.1, at p. 15, refers to a map which shows the lands meeting the designation
25 criteria.

26 ⁵⁰ Prior to the compliance effort, the County had a combined Future Land Use Map/Zoning Map. See Lewis
27 County's Response to Objections On Compliance, p. 4, line 6

28 ⁵¹ See Ex. 88, entitled "Rezone Applications With Lewis County Current Zoning April 2010"; Ordinance 1219,
29 Exs. B, D and E; Lewis County, Washington Comprehensive Plan, Figures 4.16b (1), (2) and (3), RESOURCE
30 LANDS, Adopted and Ratified by the Board of County Commissioners April 4, 2002 pursuant to Ordinance
31 1179, Revised December 12, 2011, Date: December 29, 2011.

32 ⁵² See HOM Transcript p. 22, line 25-p. 23, line 4 where Counsel for the County stated: "Lewis County
classified certain lands that are forest resource land as local importance or long-term commercial significance,
but they designated only one kind of forest resource land, and that is forest resource land, period."
Intervenor's property was included in the FRL designated at that time. See Lewis County's Response to
Objections, p. 9: "The Forecastle property was part of an area of FRL that included a core of at least 5000
contiguous acres of primary forestlands."

⁵³ See Lewis County's Response to Objections on Compliance at 4.

⁵⁴ The County acknowledged that fact at the Hearing on the Merits. See transcript, p. 61, line 2 and p. 61, line
22 to p. 62, line 1.

1 properties, totaling approximately 2200 acres, were not designated natural resource lands
2 of any type, let alone forest resource lands, and had not yet been zoned.⁵⁵ Intervenor is the
3 only property owner known to ever request to opt in to FLLI from lands which had been
4 designated FLLTCS.

6 **D. Contiguous Argument**

7 The County's Comprehensive Plan and development regulations do not include a definition
8 of the word "contiguous" as used in the phrase "minimum block size of 5000 contiguous
9 acres." In 2011 Intervenor requested that part of its 2080 acre property's FRL "designation/
10 zoning classification" be changed from FLLTCS to FLLI based on the argument its property
11 was not part of a 5000 acre contiguous block.⁵⁶ That request was granted. The County's
12 challenged Resolution and Ordinance⁵⁷ found the property was not part of a "5000 acre
13 contiguous block" as it was bounded by Mineral Hill Road to the west, a railroad line to the
14 east and the Nisqually River to the north. To reach this conclusion, the County employed a
15 definition of "contiguous" found in its subdivision regulations.

18 Petitioners challenged the County's approval and the Board held the granted change
19 resulted in an inconsistent future land-use map and inconsistent zoning map as similarly
20 situated properties were designated and zoned differently. In the FDO, the Board found that
21 through this process the County had "reinterpreted" the definition of contiguous acres.⁵⁸
22 That reinterpretation supported the County's decision to grant the "opt in" designation
23 request from the Intervenor whose property had been shown as FRL (all of which the Board
24 has concluded had to have been FLLTCS). As a result of the County's approval, a portion
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28 ⁵⁵ While it is admittedly conjecture, based on the record before the Board, Lewis County may have created the
29 FLLI category to accommodate small forest landowners who wished to maintain their non-designated forest
30 lands as active timberlands. Such a designation possibly included protection from nearby incompatible uses
31 and a more favorable property tax classification.

31 ⁵⁶ See for example, Ex. 49, IR 165.

32 ⁵⁷ The Resolution amended the Comprehensive Plan Land Use Map to redesignate 830 acres from FLLTCS to
FLLI and the Ordinance amended the Official Lewis County Zoning Map to reflect the rezone of 830 acres.

⁵⁸ Whether or not the County consciously "interpreted" the definition of "contiguous acres" when it first
designated its FRL in 1996 is an unknown. The Board's use of that word arose from a comparison of the
County's original FRL designations with the interpretation put forward by the County in its adoption of the
challenged Resolution and Ordinance redesignating Intervenor's 830 acres.

1 of Intervenor's land (830 acres) was shown as FLLI while the balance of 1250 acres
2 remained as FLLTCS.

3
4 Other County properties were also shown on the combined Land Use/zoning map as FRL
5 although those properties did not meet the minimum block of 5000 contiguous acres
6 criterion under the definition used by the BOCC in 2011. That is, other designated FRL
7 properties in the County which were bounded by roads, watercourses and railroad rights-of-
8 way, and were less than 5000 contiguous acres under the applied definition, remained
9 designated as FLLTCS.
10

11 On compliance, the County's only action was to adopt separate land use and zoning maps.
12 The land use map shows all designated forest resource land (both FLLTCS and FLLI) as
13 FRL. In regards to the Intervenor's property, the entire 2080 acres is shown on the land-use
14 map as designated FRL. The zoning map shows the property's two categories separately:
15 830 acres are designated and zoned as FLLI and 1250 acres are designated and zoned as
16 FLLTCS.
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19 RCW 36.70A.070 (preamble) requires that a comprehensive plan be internally consistent
20 and all elements are required to be consistent with the future land use map. If one focuses
21 solely on Intervenor's property, the entire 2080 acres are designated as FRL. However,
22 there is an inconsistency in that 1250 acres are designated/mapped as FRL although the
23 1250 acres does not meet the 5000 acre contiguous block criterion as now
24 interpreted/applied by the County (and the owner has never "opted in" to the FLLI
25 classification).
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27
28 RCW 36.70A.130(1)(d) requires that any amendment of or revision to development
29 regulations must be consistent with and implement the comprehensive plan. Again, under
30 the interpretation of "contiguous" employed by the County, neither of the Intervenor's
31 parcels are part of a 5000 acre contiguous block. However, one is zoned as FLLTCS while
32 the other is FLLI. A zoning map is a development regulation. Zoning the 830 acres as FLLI
appears to be consistent with and appears to implement the Comprehensive Plan using the

1 BOCC's interpretation as it is less than 5000 contiguous acres and the owner has opted in.
2 But, an inconsistency exists as the remaining 1250 acres are zoned as FLLTCS. Zoning the
3 1250 acres as FLLTCS is not consistent with and fails to implement the Comprehensive
4 Plan.⁵⁹

5
6 If one looks beyond Intervenor's property, there are approximately 30 properties which were
7 originally designated as FRL which do not meet the Comprehensive Plan classification and
8 designation criteria, as interpreted by the County.⁶⁰ They are not part of 5000 acre
9 contiguous blocks as the County defines them. However, they remain designated as FRL
10 and zoned as FLLTCS. That being the case, those properties would have never been
11 designated, let alone zoned using the current BOCC criteria interpretation. Designation of
12 those properties as FRL results in an inconsistent Comprehensive Plan and zoning them as
13 FLLTCS is not consistent with and fails to implement the Comprehensive Plan.

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16 But for the "reinterpretation", there would be no inconsistency on the Land Use Map or on
17 the zoning map.⁶¹ All properties designated as FRL on the new Comprehensive Plan Land
18 Use Map would be FLLTCS meeting the 5000 contiguous acres criteria (excepting only the
19 recently discovered 1996-1997 FLLI properties). And the zoning map would properly show
20 FLLTCS lands zoned that way and would show the eight 1996-1997 FLLI "opt-in" properties
21 zoned as FLLI.

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24 With the "reinterpretation", the Comprehensive Plan Land Use Map shows all designated
25 forest resource lands as FRL. However, inclusion of Intervenor's 1250 acres conflicts with
26 the designation criteria as it is not part of a 5000 acre contiguous block and the owner has
27 not opted in. Additionally, there are the estimated 30 additional areas which are shown as
28 FRL which neither meet the 5000 acre requirement nor have the owners opted in.

29
30 ⁵⁹ When the County determined the Comprehensive Plan designation "contiguous" criterion for a block of
31 forest land must take into consideration road and railway rights-of-way and navigable waterways, then, for the
32 development regulation (zoning map) to be consistent with and implement the Comprehensive Plan criteria, no
block of forest land of less than 5000 contiguous acres could be zoned as FLLTCS. It could only be zoned as
FLLI with the caveat that the owner must have applied for and been granted FLLI.

⁶⁰ See for example, Ex. 88 as well as "Official Lewis County Zoning Map" attached as Tab 1 to Petitioners'
(Butler's) Objections to Compliance.

⁶¹ Excluding the redesignation of Intervenor's property.

1 Similarly, the zoning map zones the two portions of Intervenor's property differently, the
2 1250 acres as FLLTCS and the 830 acres as FLLI. The 1250 acres should not be zoned as
3 FLLTCS as it does not meet the 5000 acre criterion. Furthermore, the 30 additional areas
4 are zoned FLLTCS.
5

6 7 IV. ORDER

8 The Board finds Lewis County has failed to achieve compliance with RCW 36.70A.070
9 (preamble) and RCW 36.70A.130(1)(d) and is in continuing noncompliance: There are
10 similarly situated properties included on the Comprehensive Plan Land Use Map as FRL
11 when some of those properties do not meet the Lewis County FRL criteria in violation of
12 RCW 36.70A.070 (preamble) as all elements are not consistent with the future land use
13 map (the Comprehensive Plan Land Use Map). There are similarly situated properties
14 included on the zoning map as either FLLTCS or FLLI when such properties could only be
15 one or the other in violation of RCW 36.70A.130(1)(d) resulting in a failure to be consistent
16 with and to implement the comprehensive plan. This case is remanded to the County for
17 compliance and the following compliance schedule shall apply:
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Item	Date Due
Compliance Due on identified areas of noncompliance	March 5, 2013
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	March 19, 2013
Objections to a Finding of Compliance	April 2, 2013
Response to Objections	April 12, 2013
Telephonic Compliance Hearing Call 1-800-704-9804 and use pin 7757643#	April 23, 2013 10:30 a.m.

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29 Dated this 6th day of September, 2012
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William Roehl, Board Member

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Nina Carter, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.⁶²

⁶² Should a party choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.